

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

MAGNESIUM REFINING TECHNOLOGY, INC.¹

Employer

and

Case No. 8-RC-16090

**UNITED STEELWORKERS OF AMERICA,
DISTRICT 1, AFL-CIO, CLC²**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ The parties have filed briefs which have been duly considered.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Employer is an Ohio corporation with an office and place of business located in Bellevue, Ohio where it is engaged in the processing and production of scrap magnesium materials. There are approximately 30 employees in the unit found appropriate herein. The Employer has operated this facility for approximately 3 years. There is no prior history of collective bargaining. The sole witness at the hearing was Plant Manager, Paul Wolanski.

The Petitioner seeks a unit of production and maintenance employees. The Employer contends that its six maintenance employees should not be included in a single bargaining unit with its 24 production employees because the two groups do not share a community of interest.

The production department encompasses the melt and cast rooms. Melt room production employees load scrap onto hoppers and operate machinery which conveys the scrap between the hoppers and the holding furnace. The classifications in the melt room include furnace operator, material handler and team leader. These employees also operate the pump system that controls the process of melting the metal. After the scrap is processed, melted and conveyed to a holding furnace, the material is transported by a conveyor belt to the cast room. In the cast room, production employees classified as cast operators and utility operators utilize equipment that pours molten metal into a series of casting molds and curing gases. The resulting ingots are then stacked by cast room production employees and the finished product is moved to the shipping

department. Some production employees work both in the melt room and the cast room. There is no dispute between the parties regarding the inclusion of the production employees in the proposed unit, including 5 team leaders.

Production employees are supervised by three production supervisors, Gale Ostrander, Orville Parker and Karen Hacker. There are 5 production shifts, one of which is a “rover shift” in which employees split their time between the melt and cast rooms. Each of the 5 shifts has a team leader. Production employees are hired, disciplined and evaluated by their supervisors with a review by the Plant Manager. Production employees are not required to have any special skills, certifications or tools. Production employees in the cast room earn \$9.00 per hour to start and \$10.00 per hour after 90 days. Production employees in the melt room earn \$9.50 per hour initially and \$11.00 per hour after 90 days. Production employees are not on call.

The maintenance department is not separately enclosed, but rather is in a partitioned area opening into the cast room. Maintenance department employees are responsible for the repair and preventive maintenance of plant equipment as well as the operation and servicing of the facility's environmental system, known as the "Bag House". Maintenance employees have electrical, welding and fabrication experience. It appears that while certain maintenance employees are certified welders or electricians, certification is not a requirement.

The six maintenance employees, Brian Daugherty, Roger Shepard, Mike Oliver, Tracy Wright, Rick Parks and Juez Diego are supervised directly by Maintenance Superintendent, Audie Meade. The record revealed that Meade is responsible for hiring recommendations, evaluations and discipline.

Maintenance employees work three separate shifts, rotate being on call and carry a beeper. They must provide their own set of tools and the Employer reimburses maintenance

employees for tools that are lost, stolen or broken. They are given on the job training relative to the operation and servicing of the "Bag House" system. Maintenance employees receive a starting wage of \$11.00 per hour and generally earn \$12.00 per hour at the expiration of a 90-day period.

The evidence discloses that the Employer utilizes an elaborate preventive maintenance schedule for equipment in both the weld and cast rooms. Equipment is serviced daily, weekly, monthly and yearly pursuant to an established schedule. According to the testimony of Plant Manager Paul Wolanski, at least 70 percent of the equipment in the facility is serviced on a daily basis. Wolanski further indicated that about 50 percent of the facility's equipment is serviced weekly. Wolanski described the Employer's "contingency mode" procedure whereby equipment or parts are continually taken out of service by maintenance employees, replaced with new equipment or parts and the component needing service is removed to the maintenance department. Wolanski acknowledged that while equipment is generally removed, replaced and serviced elsewhere, during emergencies, or on major pieces of equipment, the repair or maintenance is performed on the floor so as not to interfere with production.

The record also establishes that production employees go to the maintenance department on a regular basis to complete service request forms. These forms in turn trigger service on the various equipment used by production employees. Additionally, the evidence revealed that, on occasion, individual production employees personally seek assistance from individual maintenance employees. According to the testimony of the Plant Manager, maintenance employees spend 60 percent of their time doing repairs on equipment.

Maintenance and production employees have comparable terms and conditions of employment. They wear the same uniform, share the same lunchroom and locker room, and

punch the same time clock. They are subject to the same handbook. New hires are subject to 30, 60 and 90 day evaluations. Thereafter, both production and maintenance employees are evaluated annually. Production and maintenance employees are required to attend the same monthly plant meetings.

With respect to wages, production employees in the cast and weld department share comparable wages with maintenance employees. In fact, the record reveals the difference in the hourly rate between melt room production employees and maintenance employees after 90 days is one dollar. Thereafter, there is no set maximum rate for production or maintenance employees. Both production and maintenance employees are paid time and one half for hours worked in excess of 40 hours. Employees in each department receive two 15 minute breaks. In either department, break times vary depending on production or maintenance requirements.

The specific shifts of production and maintenance employees vary somewhat, with production employees having 5 separate shifts, due in part to the division between melt and cast room operations. However, shifts in both the production and the maintenance departments effectuate the facility's 24 hour production schedule. Although the plant manager testified that maintenance employees often work Saturdays due to production shutdowns, he acknowledged that there has also been two production runs on Saturdays since May of this year.

While maintenance department employees are directly supervised by Maintenance Superintendent Audie Meade, production employees are supervised by three supervisors working three separate shifts. However, maintenance and production supervisors each report directly to Paul Wolanski, the plant manager. Wolanski testified he maintains an open door policy with respect to any problems or complaints raised by either production or maintenance employees.

Additionally, Wolanski testified that production and maintenance employees can be disciplined by him.

Although the Employer argues the maintenance employees should not be included in a unit with production employees because maintenance employees have specialized education and skills, the plant manager was unaware of whether employees hired into the maintenance department were required to have particular electrical or fabricating experience or a welding certification. Despite the uncertainty over the extent of specialized experience required of maintenance applicants, the Employer argues in its brief that maintenance employees do not need to receive standardized on-the-job training like production employees, and accordingly, should not be included in a unit with production employees. Nevertheless, the Employer acknowledges that maintenance employees receive on the job training relative to the functioning and servicing of the "Bag House".

In determining whether a petitioned-for unit is appropriate the Board first considers the union's petition and whether the unit sought is appropriate. **Overnite Transportation, 322 NLRB 723 (1996); P.J. Rich Contracting, 290 NLRB 150, 151 (1988).** Thus, the unit sought by the petitioner is always a relevant consideration. **E.H. Koester Bakery & Co., 136 NLRB 1006 (1962).** The Board's longstanding policy is that the petitioned-for unit need only be an appropriate unit for collective bargaining, not the optimum or most appropriate unit. **Overnite Transportation, supra; Morand Brothers Beverage Co., 91 NLRB 409, 418 (1950).**

With respect to the instant proceeding the Board has long held that a petitioned-for unit of production and maintenance employees is a presumptively appropriate unit. **J.P. Stevens & Co., 268 NLRB 63, 76 (1983); Jay Kay Metal Specialties Corp., 129 NLRB 31 (1960); and**

Appliance Supply Co., 127 NLRB 319, 321 (1960). I find on the basis of the record that the Employer has not rebutted that presumption.

I conclude there is a sufficient community of interest between production and maintenance employees to conclude the petitioned for unit is an appropriate one. While there are certain differences between the terms and conditions of employment of the maintenance employees such as their immediate supervision there is sufficient common ground, including similar benefits, comparable wage rates and shifts and the fact that maintenance employees play an integral role in assuring uninterrupted production, to warrant the direction of an election in the unit sought by the Petitioner.

In reaching this conclusion, I have taken note of the cases cited by the Employer in its post-hearing brief, where separate maintenance units were found appropriate. As these cases dealt with instances where a separate maintenance unit was petitioned for, I find them distinguishable from the instant matter.

Finally, the record establishes and I find that the following named individuals are supervisors within the meaning of Section 2(11) of the Act and accordingly are excluded from the unit.

Paul Wolanski	Plant Manager
Gale Ostrander	Production Supervisor
Orville Parker	Production Supervisor
Karen Hacker	Production Supervisor
Audie Meade	Maintenance Superintendent
Roger Tobar	Plant Engineer

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit

who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **UNITED STEELWORKERS OF AMERICA, DISTRICT 1, AFL-CIO, CLC.**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).** The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary

circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by September 20, 2000.

Dated at Cleveland, Ohio this 6th day of September 2000.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

440-1760-1501